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JOSEPH R. BIDEN, III
ATTORNEY GENERAL

September 22, 2010

Colonel Robert M. Coupe
Superintendent
Delaware State Police
P. O. Box 430
Dover, DE 19903


RE: AG Case #19-10-01-0005, Police Use of Deadly Force Investigation
Subject: Chad Michael Fulginiti
Officer: Cpl. Jeffrey Ballinger
Date of Incident: December 26, 2009

Dear Colonel Coupe:

The Delaware Department of Justice has completed its investigation and review of the use of deadly force by Cpl. Jeffrey Ballinger on December 26, 2009. As a result, Cpl. Ballinger's use of deadly force was deemed justifiable and is not subject to criminal prosecution under Delaware law.

Thank you and your command for your cooperation and assistance in this matter. A copy of my report is attached. Please contact me if you have any concerns or questions.

Sincerely,


Timothy Mullarney, Sr.
Deputy Attorney General

TPM/mam
Enclosure

REPORT OF THE DELAWARE DEPARTMENT OF JUSTICE

DELAWARE STATE POLICE SHOOTING

Subject: Chad Michael Fulginiti

Officer: Corporal Jeffrey Ballinger

December 26, 2009

By: Timothy Mullaney Sr. 
Deputy Attorney General

Date: September 15, 2010

SCOPE OF THE INVESTIGATION

This is the final report of the Delaware Department of Justice on the use of deadly force against Chad Michael Fulginiti by Corporal Jeffrey Ballinger of the Delaware State Police (DSP) on December 26, 2009. Chief Special Investigator Thomas Penoza conducted the investigation. Deputy Attorney General Timothy Mullaney, Sr. supervised the investigation and review of the use of force for the Department of Justice (DOJ). Statements were taken from police officers at the scene. They also reviewed physical evidence, reports written by officers who responded to the scene or otherwise participated in the investigation, witness interviews, photographs, and medical records.

PURPOSE OF THE ATTORNEY GENERAL'S INVESTIGATION

The DOJ's investigation of police shootings serves a specific but limited purpose. The DOJ determines whether a police officer's use of deadly force constitutes a criminal act. The DOJ does not establish or enforce internal police policies concerning the proper use of deadly force by police officers. Police departments are responsible for establishing and enforcing guidelines for the use of force by their officers and for determining whether an officer's actions were consistent with such guidelines in a given case.

This report expresses no opinion whether the officer's actions complied with the departmental policies or procedures concerning the use of force set by the DSP or whether, with the benefit of hindsight, the officer could have proceeded differently. This is a matter of a separate internal investigation being undertaken by the DSP. The only purpose of the Department's investigation of this shooting is to determine whether the officer committed a crime when he used deadly force against Chad Fulginiti. One of the issues that must be considered in any intentional shooting is whether the use of deadly force was justified under all of the circumstances.

FACTS OF THE INVESTIGATION

On December 26, 2009 at approximately 0700 hours Chad Fulginiti became involved in a domestic dispute. Fulginiti's wife went to work at which time Fulginiti called her approximately 40 times. Fulginiti's wife was concerned for her husband and responded to Walmart, where she located Fulginiti and their 5 year old son in the parking lot. Fulginiti took off with his son in his truck, almost striking his wife. Fulginiti finally stopped on Route 24 put his son out of the vehicle and fled. Fulginiti's wife, who had been following Fulginiti, picked up her son. She returned to her residence where she realized her husband's handgun was missing. She was concerned that her

husband would harm himself and notified Sussex County Emergency Operations Center (SUSCOM) at 1430 hours. Fulginiti was driving a 1995 gray, Nissan pickup truck.

On December 26, 2009 at 1630 hours SUSCOM located Fulginiti, through his cell phone, in Dewey Beach on Van Dyke Street. Troopers responded and located Fulginiti driving on Route 1 in Dewey Beach. He was driving erratically and made numerous u-turns. He ran one red light on Route 1 in Rehoboth Beach and then stopped at a green light. He was driving with his lights out at 65 MPH to 70 MPH, at one point reaching 100 MPH. There was poor visibility due to the rain, fog and dark overcast sky. After crossing the Inlet Bridge the troopers lost sight of Fulginiti, but he was located again in the South Shore Marina area. Troopers blocked South Shore Drive just south of Marina View Court with three police vehicles to try and stop Fulginiti from leaving in his vehicle.

At about the same time that Troopers located Fulginiti in Dewey Beach, a member of DSP's Crisis Management Team was patched through by SUSCOM to Fulginiti's cell phone. Fulginiti hung up on the crisis team member numerous times while he drove from Dewey Beach to South Shore Drive. Based upon Fulginiti's erratic behavior and comments made to the crisis team member, the DSP Special Operations Response Team (SORT) was activated. Fulginiti acknowledged in his conversation with the crisis team that he was armed but did not intend to use it on himself. He also admitted that he had gone to a local business earlier in the day and damaged a vehicle belonging to someone he thought was having an affair with his wife. During these calls Fulginiti became more and more irritated and stated that if he is stopped he will make the police shoot him. He also stated that if anyone came near his car there would be problems. He expressed a desire to drive to a crowded place with no other explanation.

Once the troopers had blocked South Shore Drive with their police vehicles, Fulginiti stopped his vehicle and exited same. He was seen handling the handgun and refused orders to "get on the ground" and "show your hands". Fulginiti yelled back at the troopers to move their vehicles. He repeated this request with the crisis team member by phone and was told he would not be allowed to leave. Fulginiti moved some large rocks on the side of the road. He then got back into his vehicle and drove over where the rocks had been and around the police vehicles blocking the roadway. When Fulginiti got around the blocked roadway and passed by Corporal Ballinger's location, Ballinger fired one round from his weapon, a 223 rifle, striking Fulginiti in the hands. Ballinger stated that due to Fulginiti's behavior and comments, he feared for the safety of the public. Ballinger felt that if Fulginiti left the area where they had him contained, he would have been free to enter one of the occupied homes in the neighborhood and create a hostage situation or Fulginiti could have harmed other civilians. After Fulginiti was shot, he drove about 100 yards and stopped. Fulginiti exited his vehicle and got on the ground. He was cuffed and medical personnel were summoned.

CONCLUSIONS

After a thorough investigation and review of all the statements, reports and other evidence described above, it is the conclusion of the Office of the Attorney General that, as a matter of Delaware Law, Corporal Jeffrey Ballinger's use of deadly force was justified in this case.

Section 465 of Title 11 of the Delaware Code generally defines the legal use of force for the protection of other persons. It provides in part, that the use of force upon another person is justifiable in order to protect a third person when: 1) the individual using the force would have been justified in using such force to protect himself against injury which he believes is being threatened to the person he seeks to protect and, 2) under the circumstance as the individual using the force believes them to be, the person who the individual seeks to protect would have been justified in using such protective force; and, 3) the person using the force believes that intervention is necessary for the protection of the other person. Additionally, the use of deadly force is justifiable if the individual using such force believes that it is necessary to protect a third person or persons from the threat of death or serious physical injury. Therefore, under Delaware Law, it is Corporal Ballinger's subjective state of mind which is of critical importance in determining whether his use of deadly force was justifiable in this case. The specific factual issue is whether Corporal Ballinger actually believed at the time that he intentionally fired his weapon that such action was necessary to protect the public from death or serious physical injury provided Corporal Ballinger was not reckless or negligent in having such belief or in acquiring or failing to acquire any knowledge or belief which is material to the justifiability of the use of force.

At the time Corporal Ballinger fired his weapon, Chad Fulginiti was armed, drove in a reckless and dangerous manner and was told repeatedly to "get on the ground" and "show your hands". Corporal Ballinger believed that the use of deadly force was immediately necessary to prevent serious injury or death to those described above due to the reckless driving and behavior of Fulginiti. The investigation of the facts and circumstances fully support the reasonableness of that belief and that it was not formed recklessly or negligently. As a result, Corporal Ballinger's use of deadly force was justified and is not subject to criminal prosecution under Delaware law.